



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BL05

Fisheries of the Northeastern United States; Atlantic Mackerel; 2022 Interim Action Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures extended.

SUMMARY: This temporary rule extends the interim specifications for the 2022 fishing year to address new assessment information regarding the status of the Atlantic mackerel stock. This action continues to reduce potential Atlantic mackerel overfishing based on new 2021 assessment findings while a revised rebuilding plan is being developed.

DATES: The expiration date of the temporary rule published January 12, 2022 (87 FR 1700), is extended to Friday, January 13, 2023.

ADDRESSES: The supporting documents for the action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281-9352.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish (MSB) Fishery Management

Plan (FMP). Section 305(c) of the Magnuson-Stevens Act allows the Secretary to implement interim measures to reduce or address overfishing. In situations such as this, in which the Mid-Atlantic Council is finalizing a new rebuilding plan, section 304(e)(6) allows the Council to request the Secretary to implement interim measures to reduce overfishing, even if such measures are not sufficient themselves to stop overfishing, until such measures can be replaced by the rebuilding plan. As further described below, NMFS implements this action to extend the interim rule that adjusts the domestic annual harvest (DAH, or commercial quota) from the previously implemented amount of 17,312 metric tons (mt) to 4,963 mt in order to minimize overfishing while the Council's revised rebuilding plan can be implemented (87 FR 1700; January 12, 2022). The initial interim rule for this action included additional background on specifications and the details of how the Council derived its recommended specifications for Atlantic mackerel. Those details are not repeated here. For additional information, please refer to the initial interim rule for this action.

Interim Atlantic Mackerel Specifications for 2022

Based on the recommendations of the Scientific and Statistical Committee (SSC), the MSB Monitoring Committee, and the Council, this action sets the 2022 Atlantic mackerel specifications, specifically the DAH to 4,963 mt. These specifications also maintain the 129-mt river herring and shad catch cap for 2022. There is an Atlantic mackerel stock assessment update scheduled for 2022 that will inform future specifications.

The initial temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The Council has approved a revised rebuilding plan, which it intends to be implemented by January 1, 2023. However, the expected rulemaking implementing the rebuilding plan will not be in place before the expiration of the initial interim rule, on July 11, 2022.

Therefore, we are extending the interim measures for 186 days to ensure the revised 2022 specifications remain in place for the full 2022 fishing year.

Justification for Extended Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to minimize overfishing on the Atlantic mackerel stock that remains overfished while the Council develops a new rebuilding program for the stock.

While some changes resulting from the 2021 stock assessment were expected, the magnitude of the shift in the perception of stock status necessitating changes to the catch limits was not, and could not have been, foreseen. The assessment results only recently became available, after the Council took final action on, and we implemented, the 2022 specifications. Based on this new information, and only two years after the implementation of the original rebuilding program for mackerel, the Council needed to develop a new rebuilding plan to incorporate the most recent scientific information. However, given that the new information only recently became available, the Council could not complete an action to develop a new rebuilding plan and adjust specifications in time for the 2022 fishing year. Because of unforeseen specification adjustments necessary to address the recent stock assessment, the Council requested that NMFS take action to reduce potential additional Atlantic mackerel harvest in 2022 via a reduction in the commercial quota while the Council developed a new Atlantic mackerel rebuilding plan for 2023. If this temporary rule is not implemented by July 11, 2022, the 2022 specifications will revert to those previously implemented based on information that does not include the most recent 2021 assessment results. Delayed implementation of these measures increases the risk and magnitude of overfishing for 2022 by allowing the

original 17,312 mt commercial catch rather than 4,963 mt, implemented by the initial interim rule.

Extending these interim measures minimizes overfishing in the Atlantic mackerel fishery and additional negative impacts to the already overfished fishery resource, as well as ensures mackerel specifications are based on the best scientific information available. Therefore, avoiding the serious conservation and management problem of subjecting the overfished Atlantic mackerel stock to continued overfishing conditions due to previously unforeseen circumstances justifies these interim measures, and outweighs the benefit of advance notice and comment.

Renewal of Interim Regulations

The Magnuson-Stevens Act limits NMFS' authority to implement interim measures for an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public had an opportunity to comment on the specification measures in this temporary rule upon issuance of the initial interim rule, and we did not receive any comments in response to the public notice on the initial interim rule. In accordance with Magnuson-Stevens Act section 305(c)(3)(B), NMFS is extending the interim measures for one additional period of not more than 186 days to maintain the interim measures until permanent rulemaking can be implemented.

Classification

NMFS issues this action pursuant to section 305(c) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b).

The Assistant Administrator for Fisheries, NOAA, finds that it would be unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). We implemented an interim rule on January 7, 2022, effective through July 11, 2022, that set Atlantic mackerel commercial harvest levels for 2022 that would maintain total catch similar to

2021 levels. This action would extend the interim measures to reduce catch rates to ensure 2022 catch does not exceed harvest levels to minimize overfishing. This rule would maintain the commercial DAH of 4,963 mt to maintain total 2022 harvest levels and incorporate new estimates of Canadian landings and U.S. recreational harvest. Harvest levels have been well below the DAH in recent years, and based on recent fishery operations and trends, this action is not expected to substantially change overall effort or harvest levels.

This action is being implemented pursuant to section 305(c) of the Magnuson-Stevens Act in order to minimize overfishing while the Council responds to the new, updated information. These provisions of the Magnuson-Stevens Act anticipate that interim provisions like these can be extended by publication in the Federal Register if the public had been provided an opportunity to comment on the original measures. A delay would be contrary to the public interest for the Atlantic mackerel fishery. Implementing a reduced DAH for fishing year 2022 was anticipated and discussed during development and implementation of the original specifications action (86 FR 38586, June 22, 2021), as well as at the August and October 2021 Council meetings. Fishery stakeholders are anticipating action to reduce mackerel harvest for the entirety of 2022, and they were provided the opportunity to comment on this in response to the public notice for the original interim rule.

Where the public has had an opportunity to review the development of the Council action to reduce Atlantic mackerel catch for 2022 based on the best available science (the purpose of this action), as well as the original interim rule, the value of a delay in its effectiveness would be outweighed by the need to implement this adjustment as quickly as possible. Failure to implement this action as quickly as possible for the remainder of the 2022 fishing year could result in 2022 catch that could have potential negative biological impacts, as well as the potential to hinder the efficacy of the

Council's new rebuilding plan, which presumed the interim measures would apply to the entirety of 2022. Given the high-volume nature of the fishery and the reduced DAH, there is a risk that the fishery will exceed the DAH if there is a lapse of the interim rule. A delay would be contrary to the public interest while we take action to implement the Council's new rebuilding plan for this species. For the same reasons, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this. This rule should be effective as close to and not after, July 11, 2022, as possible, to fully realize the intended benefits to this high-volume fishery.

This action is being taken pursuant to the 305(c) emergency action and interim measures provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget (OMB) review.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action would not establish any new reporting or recordkeeping requirements.

This interim rule contains no information collection requirements under the Paperwork Reduction Act of 1995

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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